

SERVED: September 4, 1998

NTSB Order No. EA-4699

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of September, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15305
v.)	
)	
DAELYN DIRKSEN,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal in this emergency revocation proceeding because it was not, as required by Section 821.57(b) of the Board's Rules of Practice,¹ perfected by the timely filing of an appeal brief by August 3, 1998; that is, within 5 days after the notice of appeal from the July 28

¹Section 821.57(b) provides, in pertinent part, as follows:

§ 821.57 Procedure on appeal.

* * * *

(b) *Briefs and oral argument.* . . . Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. . . . Appeals may be dismissed by the Board on its own initiative or on motion of a party. . . in cases where a party fails to perfect the notice of appeal by filing a timely brief.

initial decision was filed on July 29.² The motion will be granted.

In response to the request for dismissal, respondent, through counsel, first erroneously asserts that his brief was filed on July 30, not July 29. Then, apparently believing that the brief was late because it was not received by the Board until August 5, respondent asserts that his counsel's other work commitments and his own post-hearing efforts to develop evidence to support a rehearing request should be sufficient to justify the one-day delay in filing the brief. Respondent also suggests that he may have miscalculated the brief's due date. These circumstances do not establish good cause for accepting the brief out of time.

In the first place, the respondent's brief was untimely because it was filed (*i.e.*, sent to the Board) on August 4, the 6th day after the notice was filed on July 29, not because it was not received by the Board until August 5.³ In the second place, the reasons for the delay cited by respondent would not have precluded a timely request for additional time to file the brief, and miscalculation of a deadline does not justify acceptance of a late brief under Board precedent. See, *e.g.*, Administrator v. Royal American Airways, Inc., 5 NTSB 1089 (1986), petition for review denied, No. 86-7512, C.A. 9, April 29, 1987; and Administrator v. Slay and Knowles, NTSB Order No. EA-3956 (1993).

In the absence of good cause to excuse respondent's failure to file a timely appeal brief, his appeal must be dismissed. See, *e.g.*, Administrator v. Mace, 7 NTSB 478 (1990) (emergency

²The law judge affirmed an emergency order of the Administrator revoking respondent's airline transport pilot, flight instructor and mechanic certificates (all numbered 504843620) for his alleged violations of section 61.59(a)(2) of the Federal Aviation Regulations, 14 CFR Part 61. Specifically, respondent, with respect to four separate flights (with as many as four students on each flight), was alleged to have intentionally, falsely endorsed the logbooks of numerous student pilots so as to indicate, in effect, that they were trained and proficient in the operation of high altitude and high performance aircraft, even though he had not provided the requisite ground instruction or observed any of the students manipulate the controls of a pressurized or high performance aircraft. The law judge found that the respondent knew that the entries he endorsed in the students' logbooks were false.

³The Notice of Appeal, the certificate of service accompanying it, and the Federal Express invoice for the notice are all dated July 29, 1998. In addition to his response to Administrator's motion, respondent's brief also erroneously states that the Notice was filed on July 30.

revocation proceeding), citing Administrator v. Hooper, 6 NTSB 559 (1988), aff'd 948 F.2d 781 (D.C. Cir. 1991).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.